

(1987) 03 AHC CK 0042

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 10042 of 1975

Om Prakash and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 02-03-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B

Citation : (1987) 1 AWC 684 : (1990) RD 405 : (1987) RD 150

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : P.C. Gautam, for the Appellant; K.B. Garg, for the Respondent

Final Decision : Allowed

Judgement

K.P. Singh, J.—This writ petition arises out of proceedings u/s 122-B of the UP ZA and LR Act.

2. Brief facts giving rise to the present writ petition are that the Petitioners were allotted the disputed land for the purposes of making constructions in the year 1964. On an application by Manbir Singh, opposite party No. 4 in the present writ petition, notice was issued to the Petitioners on 9-11-1965 for their ejectment and damages on the allegations that they had illegally encroached upon the land of Gaon Sabha. It also appears that an application was moved by the opposite party No. 4 Manbir Singh for cancellation of the allotment of the disputed land to the Petitioners on the ground that the allotment was illegal. On 5-6-1969 the allotment was cancelled by the Sub Divisional Officer. On 12-11-1969 the Petitioners were ordered to be evicted and damages to the tune of Rs. 500/- were awarded against the Petitioners. Aggrieved by the order of the Assistant Collector First Class, dated 12-11-1969 the Petitioners preferred revision petitions which were recommended to be allowed partly as is evident from Annexure 2 attached with the writ petition. The revisional court through its judgment dated 24-2-1975 dismissed the revision petition. Now the Petitioners

have approached this Court under Article 226 of the Constitution.

3. Two contentions have been raised on behalf of the Petitioners, firstly, that the revenue court had no jurisdiction to demolish the constructions raised by the Petitioners in the facts and circumstances of the present case, and secondly, that damages to the tune of Rs. 500/- were awarded against the Petitioners without any basis in evidence. The revisional court has failed to address itself to the question of damages though the Additional Commissioner through his order dated 23-2-1971 contained in Annexure 2 attached with the writ petition had recommended for cancellation of damages awarded by the trial court.

4. The learned Counsel for the Gaon Sabha has tried to refute the contentions raised on behalf of the Petitioners. He has placed reliance upon the decision of mine in *Uttam Singh v. Board of Revenue* Civil Misc. Writ Petition No. 6341 of 1974 and has contended that the revenue court had ample jurisdiction to remove the encroachment and no legitimate grievance can be made on behalf of the Petitioners that the revenue court had no jurisdiction to demolish the constructions raised by the Petitioners. It has also been emphasized that the award of damages is not at all excessive in the facts and circumstances of the present case.

5. I have considered the contentions raised on behalf of the parties and I have gone through my decision in writ petition No. 6341 of 1974. No doubt the revenue courts have jurisdiction under the provisions of Section 122-B of UP ZA and LR Act to remove the encroachment upon the land belonging to Gaon Sabha. The facts involved in the *Uttam Singh v. Board of Revenue*, Writ Petition No. 6341 of 1974 were quite dis-similar to the facts and circumstances involved in the present writ petition. In that case the position of the Petitioner was that of a rank trespasser and he had made encroachment over the land of the Gaon Sabha by extending his constructions illegally. In the present case the Petitioners were allotted the disputed land for the purposes of making constructions within the prescribed time and thereafter the allotment of land in favour of the Petitioners has been cancelled in the year 1969. During the period when the licence was operative the Petitioners made pucca constructions which are being sought to be removed in the proceedings u/s 122-B of the UP ZA and LR Act. To my mind, the proceedings u/s 122-B of the UP ZA and LR Act against the Petitioners are wholly unwarranted and unjustified. On the date when the notice was issued to the Petitioners in proceedings u/s 122-B of the UP ZA and LR Act their possession was not illegal or unlawful. The allotment in favour of the Petitioners was cancelled much after the initiation of proceedings u/s 122-B of the UP ZA and LR Act against the Petitioner. In the present case I have a feeling that the demolition of the Petitioner's constructions cannot be done by the revenue courts in a summary proceedings. On the facts and circumstances involved in the present case, a bonafide question of title appears to have been raised by the Petitioners. The order of ejectment by the trial court has been passed on 12-11-1969 and the allotment of land in favour of the Petitioners was cancelled on 5-6-1969.

Therefore, if a licensee has made constructions over the land of the Gaon Sabha and the Gaon Sabha wants possession over the land after cancellation of the allotment, I do not think that the Gaon Sabha should be permitted to take recourse to summary proceedings because in such a circumstance a bonafide question of title of the alleged trespassers would be involved. In my opinion, the Gaon Sabha cannot derive any benefit out of my decision in writ petition No. 6341 of 1974 which dealt with the case of a pure trespasser who had extended his Abadi illegally and thereby had encroached upon the land of Gaon Sabha.

6. It is note-worthy that the question of jurisdiction arises on the facts involved in each case. Nature of encroachment and that of the constructions involved would determine the jurisdiction of revenue courts or officers whether they can take recourse to summary proceedings. It cannot be said absolutely that the revenue courts can demolish the constructions in proceedings u/s 122-B of the UP ZA and LR Act. The jurisdiction of the revenue courts would depend upon the facts of each case. In the present case since the Petitioners being licensee made constructions over the disputed land, I think that a bonafide question of title to the land is involved despite the fact that the allotment of the land in favour of the Petitioners has been cancelled but still a question arises whether the Petitioners can claim the land beneath the constructions on the ground that a licensee has raised pucca constructions during the continuance of the licence. Such a question does raise bonafide question of title in favour of the Petitioners.

7. The learned Member in his order dated 24-2-1975 while dismissing the revision petition has made the following, observation in para 4 as below:

...The learned Additional Commissioner in his recommendation does agree that while the orders for formal ejectment from the land may be passed the demolition of the construction should not be ordered as it is not within the competence of the revenue courts. In a case like this where the constructions etc. have been made during the proceedings and when the title was not clearly established there is every justification for the removal of the encroachment and trespass in whatever form it may exist. I do not subscribe in such a case. Therefore the contention of the learned Counsel for the revisionists that the construction should not be removed in the summary proceedings and the proper remedy lies in the civil court has no force.

8. To my mind the learned Member has patently erred in observing that the constructions were made during the proceedings u/s 122-B of the UP ZA and LR Act whereas the correct fact is that the constructions has been made by the Petitioners prior to the initiation of proceedings u/s 122-B of the UP ZA and LR Act. In the facts and circumstances of the present case the recommendation of the Additional Commissioner in his order dated 22-3-1971 that the disputed constructions could not be demolished in a summary proceedings appears to me correct and justified.

9. It is also note-worthy that the learned Member has not addressed himself to

the question of damages awarded by the trial court. The Additional Commissioner in his recommendation had indicated that the award of damages should be cancelled yet the learned Member has failed to address himself to this question. Therefore, the impugned judgment suffers from patent error of law and deserves to be quashed. On the facts and circumstances involved in the present case when the allotment of land to the Petitioners was cancelled on 5-6-1969 whether the Petitioners could be asked to pay Rs. 500/- for the land on 12-11-1969 when the trial court decided the case. This aspect of the matter has not at all been considered by the revisional court. A serious question also arises in the present case if the Petitioners can claim the disputed land beneath their constructions on the ground that they, being licensees had made pucca constructions, whether any damages can be awarded against them at all. Since the impugned judgment of the revisional court suffers from patent errors of law, it deserves to be quashed. The revisional court should re-examine the claims of the Petitioners in the light of the discussions above and pass final order in the revision petition strictly in accordance with law.

10. In the result, the writ petition succeeds and the impugned judgment of the revisional court dated 24-2-1975 is hereby quashed and the revisional court is directed to decide the revision petition strictly in accordance with law. Parties are directed to bear their own costs.